

FAMILY EMPLOYMENT

Family employment is the term used to describe one family member employed by another family member. Certain family employees are excluded under Section 631 of the California Unemployment Insurance Code (CUIC) from Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance (SDI) coverage. However, the wages paid to the family member are subject to Personal Income Tax (PIT) withholding and are reportable as PIT wages. Please note that when a family employment exclusion applies, an opportunity exists for SDI coverage. SDI Elective Coverage may be requested if both the employer and employee agree. (Refer to Information Sheet: Specialized Coverage, DE 231SC.)

Section 631 of the CUIC states in part that 'Employment' does not include service performed by a child under the age of 18 years in the employ of his [or her] father or mother, or service performed by an individual in the employ of his [or her] son, daughter, or spouse. Section 631-1 of Title 22, California Code of Regulations, specifies that this exemption includes adopted children under 18 years of age, but stepchildren, foster children, sons-in-law, or daughters-in-law are not included. Once a child reaches his or her eighteenth birthday, this exclusion no longer applies.

The exclusion for a minor child differs from the federal rules in that it applies even if the minor is married, living with parents, or independently self-supporting.

Services performed by an individual in the employ of relatives other than those referred to in Section 631 of the CUIC are not excluded. For example, services performed by an individual in the employ of his or her brother, sister, niece, nephew, aunt, uncle, stepparent, foster parent, father-in-law, mother-in-law, or grandparent are not excluded.

Section 631 of the CUIC does not apply if the employing entity is a corporation, even if all of the stock of the corporation is owned by one person or jointly held by a married couple. In this situation, the worker is employed by the corporation, not by the shareholders to whom he or she is related. Similarly, this exclusion does not apply if the employing entity is a Limited Liability Company.

When applying the Section 631 family employment exclusion to a partnership, the family employment criteria must be applied to each partner individually. If the criteria for the exclusion apply to each partner individually, the family member would then be excluded from UI, ETT, and SDI for services performed for the partnership. If any partner does not meet the family criteria, the family member would not be excluded from UI, ETT, and SDI coverage.

The following are examples of partnerships where Section 631 exclusion applies:

- ◆ A husband and wife general partnership employing their natural or legally adopted minor children. (A minor child who is the stepchild of one of the partners would not qualify for the exclusion.)
- ◆ A general partnership consisting of siblings who employ their natural or adoptive parent(s).
- ◆ A general partnership between the employee's natural or adoptive parent(s) and the employee's spouse as long as the employee is under 18 years of age.

Examples of situations where Section 631 exclusion does not apply:

- ◆ A limited partnership that employs two minor children of the general partner. As the partnership is not composed solely of the parents of the minor children, the minor children's services would not be excluded.
- ◆ A son and daughter-in-law partnership employing the son's father and mother. This relationship does not meet the qualifications for exemption and services performed would not be excluded.
- ◆ A corporation that employs the wife and son of the corporate president. The services performed by the wife and son would not be excluded.

Additional Information

For additional information, please contact our Employment Tax Customer Service Representative at 1-888-745-3886. For TTY (non verbal) access, call 1-800-547-9565. Employer Tax Forms and publications are also available on the Internet at www.edd.ca.gov

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